

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel)
and Economy Purchased Power) Case No. 10-974-EL-FAC
Component of its Market-Based)
Standard Service Offer for 2010.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its System)
Reliability Tracker of its Market-Based) Case No. 10-975-EL-RDR
Standard Service Offer for 2010.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in these matters and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Amy B. Spiller, Rocco O. D'Ascenzo, and Elizabeth H. Watts, 2500 Atrium II, 139 East Forth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, Thomas W. McNamee and Stephen A. Reilly, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Jeffery L. Small, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is a public utility as defined under Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

By opinion and order issued October 24, 2007, in *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative*

Competitive-Bid Service Rate Option Subsequent to the Market Development Period, Case No. 03-93-EL-ATA, et al. (03-93), the Commission ordered The Cincinnati Gas & Electric Company, now known as Duke, to establish both a fuel and economy purchased power component (FPP) and a system reliability tracker component (SRT) of its market-based standard service offer (SSO). The FPP consists of fuel and purchased power expenses, a reconciliation adjustment, a system loss adjustment, and emission allowances. The SRT permits Duke to apply annually to the Commission to purchase power to cover peak and reserve capacity requirements and to flow through those actual costs on a dollar-for-dollar basis.

The Commission approved the creation of Riders price-to-compare (PTC)-FPP and system resource adequacy (SRA)-SRT as a continuation of its FPP and SRT in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al. Both Rider PTC-FPP and Rider SRA-SRT are subject to audit by the Commission. The last such audit was accomplished in *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer for 2010*, Case Nos. 09-974-EL-FAC, et al. (09-974).

On November 18, 2009, the Commission issued RFP No. U09-FPP-1 in 09-974, in order to obtain qualified independent auditing services for annual audits of Riders PTC-FPP and SRA-SRT for calendar years 2009, 2010, and 2011, Audits 1, 2, and 3, respectively. The RFP stated that the Commission assumed that the auditor selected to perform Audit 1 would also perform Audits 2 and 3. However, the Commission reserved the right to rescind the award of Audits 2 and 3. On January 7, 2010, in 09-974, the Commission selected Schumaker and Company (Schumaker) to perform the audit of Rider PTC-FPP and Rider SRA-SRT for the calendar year 2009. By entry issued January 19, 2011, the attorney examiner directed Schumaker to file its final audit report for calendar year 2010 in these dockets by May 12, 2011. On May 12, 2011, both a redacted and an unredacted version of Schumaker's management/performance (m/p) and financial audit of Duke's Riders PTC-FPP and SRA-SRT for the year 2010 (audit report), were filed in these cases.

On March 1, 2011, Duke filed its application requesting approval of Rider PTC-FPP prices and Rider SRA-SRT charges for the period ending December 31, 2010. Duke also filed witness testimony on March 1, 2011, as amended May 24, 2011.

By entry issued June 1, 2011, the attorney examiner granted the motion to intervene filed by the Ohio Consumers' Counsel (OCC), set this matter for a hearing on August 3, 2011, and granted Duke's motion for protective treatment regarding certain information contained in the audit report filed May 12, 2011, and attached to the

testimony filed by Duke on March 1, 2011, as amended May 24, 2011, for a period of 18 months, ending on December 1, 2012.

In accordance with the attorney examiner's June 1, 2011, entry, the hearing was held in these matters on August 3, 2011, at the offices of the Commission. At the hearing, Duke submitted a stipulation and recommendation (stipulation) which was filed in these dockets on July 28, 2011, and signed by Duke, Staff, and OCC (Jt. Ex. 1). In addition, the following exhibits were entered into the record without objection: the March 1, 2011, application (Duke Ex. 1); the testimony of Duke's witnesses (Duke Exs. 2-5, 2A, and 4A); and the redacted and unredacted versions of the audit report filed May 12, 2011 (Staff Exs. 1 and 1A).

II. Summary of the Audit Report and Stipulation

The audit report submitted by Schumaker presents the results of Schumaker's m/p and financial audit for Riders PTC-FPP and SRA-SRT for the year 2010 (Staff Ex. 1). In the audit report, Schumaker discusses Duke's Fuel Forecasting and Procurement in Chapter III, Duke's Environmental Compliance in Chapter VI, and Duke's Midwest Independent System Operator related charges in Chapter VIII, the auditor had no recommendations for these operations (Staff Ex. 1 at 7, 89, 101). However, Schumaker set forth recommendations for the other areas of Duke's operations in the audit report.

As stated previously, a stipulation, signed by Duke, Staff, and OCC was submitted on the record, at the hearing held on August 3, 2011. The stipulation was intended by the signatory parties to resolve all outstanding issues in these proceedings. The stipulation includes provisions that address the recommendations set forth in the audit report.

The following is a summary of the recommendations from the audit report, followed by a summary of the stipulation addressing those recommendations. The Commission notes that these summaries are in no way intended to replace or supplement the text of either the audit report or the stipulation.

(a) Audit Report, Chapter IV, Power Plant Performance

- (i) Audit Report - Duke should utilize existing eMax reports and refine processes to monitor work order performance (actual vs. estimated hours) and schedule attainment (actual vs. scheduled work completed) (Staff Ex. 1 at 69).

Stipulation - Duke will use its existing eMax reports and refine processes to monitor work order performance (actual

vs. estimated hours) and schedule attainment (actual vs. scheduled work completed). The auditor for the 2011 audit report will review and report on the adequacy of Duke's implementation of this requirement. (Jt. Ex. 1 at 5.)

(b) Audit Report, Chapter V, Fuel Handling and Inventory Management

- (i) Audit Report - Duke should continue working on managing demurrage charges (Staff Ex. 1 at 88).

Stipulation - Duke will continue working on managing demurrage charges. Following up on the investigation of methods to lower demurrage charges report to the auditors for the 2010 audit report, Duke will report its continuing efforts to reduce demurrage charges in time for consideration in the 2011 audit report. (Jt. Ex. 1 at 5-6.)

- (ii) Audit Report - Duke should continue to refine process control of coal pile inventories (Staff Ex. 1 at 88).

Stipulation - Duke will continue to refine process control of coal pile inventories. The auditor for the 2011 audit report will review and report on the adequacy of Duke's implementation of this requirement. (Jt. Ex. 1 at 6.)

(c) Audit Report, Chapter VII, Alternative Energy Portfolio

- (i) Audit Report - Duke should develop a plan for meeting the alternative energy requirements beyond the 2011 timeframe (Staff Ex. 1 at 99).

Stipulation - Duke will discuss its plan for meeting the alternative energy requirements beyond the 2011 timeframe in a meeting with the signatory parties to be conducted in Columbus in February, or such other time as agreed upon by all signatory parties. Duke's planning in connection with the filing of its long-term forecast report during 2012 shall be among the topics for the meeting. Duke shall assure that its technical experts regarding planning for alternative energy requirements are available for the meeting. (Jt. Ex. 1 at 6.)

(d) Audit Report, Chapter IX, Financial Review

- (i) Audit Report - Duke should refund the omitted \$612,970 in 2010 vintage year emission allowance (EA) sales margins back to customers in the next FPP filing (Staff Ex. 1 at 128).

Stipulation - Duke shall credit \$612,970 in 2010 vintage year EA sales margins back to its Rider PTC-FPP customers in the first quarter practicable following a Commission order that approves this stipulation. The credit shall occur in the September 2011 Rider PTC-FPP filing, if this stipulation is approved by September 1, 2011, or in a subsequent filing that provides for the credit to Rider PTC-FPP. Duke will also credit the sale of EAs performed on behalf of its native load customers for the remainder of the ESP period that terminates on December 31, 2011. The auditor for the 2011 audit report will review and report on Duke's compliance with this requirement. (Jt. Ex. 1 at 6-7.)

- (ii) Audit Report - Duke should complete work to develop an accounting and procedures manual governing the processes involved in filing Rider PTC-FPP (Staff Ex. 1 at 128).

Stipulation - Duke will complete work to develop an accounting and procedures manual governing the processes involved in filing for fuel or fuel-related charges. The manual shall be developed in time for review by the auditor for the 2011 audit report, and the auditor shall review and report on the adequacy of Duke's accounting and procedures manual for Rider PTC-FPP. (Jt. Ex 1 at 7.)

- (iii) Audit Report - Duke should establish a procedure for verifying customer bill information when supplying it from Duke's billing system to outside auditors during testing procedures (Staff Ex. 1 at 128).

Stipulation - Duke will establish a procedure for verifying customer bill information when supplying it from Duke's billing system to outside auditors during testing procedures. The procedure will be used in supplying information to the auditor for the 2011 audit report, and the auditor will review

and report on the adequacy of Duke's implementation of this requirement. (Jt. Ex. 1 at 7.)

- (iv) Audit Report - Duke should complete work to develop an accounting and procedures manual governing the processes involved in filing Rider SRA-SRT (Staff Ex. 1 at 133).

Stipulation - Duke will complete work to develop an accounting and procedures manual governing the processes involved in supporting documentation for the existing Rider SRA-SRT. The manual will be completed according to the directive contained in the 2010 audit report. The manual shall be developed in time for review by the auditor for the 2011 audit report, and the auditor shall review and report on the adequacy of Duke's accounting and procedures manual for Rider SRA-SRT. (Jt. Ex. 1 at 7.)

CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? .
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559, citing *Consumers' Counsel, supra*, at 126. The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

Duke witness William Don Wathen Jr. testified that the stipulation is a product of serious bargaining among capable, knowledgeable parties and is the product of an open process. Mr. Wathen further explains that the stipulating parties represent a broad range of interests, regularly participate in rate proceedings before the Commission, are knowledgeable in regulatory matters, and are represented by experienced, competent counsel. Moreover, Mr. Wathen represents that all parties to this proceeding participated in settlement discussions and had an opportunity to express their opinions during the negotiation process. (Duke Ex. 5 at 2-3.) Upon review of the terms of the stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Wathen explains that the stipulation addresses the recommendations contained in the audit report and provides a credit back to customers. (Duke Ex. 5 at 4). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Duke witness Wathen also testified that the stipulation does not violate any important regulatory principle or practice, as the stipulation results in a reasonable rate for customers and allows the company to recovery its costs consistent with the terms of Duke's approved electric security plan (Duke Ex. 5 at 4). Accordingly, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

We find that the stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a public utility under Section 4905.02, Revised Code, and is subject to the jurisdiction of this Commission.

- (2) These cases relate to the Commission's review of Duke's Riders PTC-FPP and SRA-SRT for the period from January 1, 2010 through December 31, 2010.
- (3) On May 12, 2011, both a redacted and an unredacted version of Schumaker's m/p and financial audits of Duke's Riders PTC-FPP and SRA-SRT for the year 2010, were filed in these cases.
- (4) By entry issued June 1, 2011, OCC was granted intervention in these cases.
- (5) A hearing in these matters was held on August 3, 2011.
- (6) At the hearing, a stipulation was submitted, intending to resolve all issues in these cases. The stipulation was signed by Duke, Staff, and OCC.
- (7) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

ORDERED, That Duke take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That Duke be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page with its next quarterly adjustment to Rider PTC-FPP. Duke shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, The effective date of the new rates for Rider PTC-FPP shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page are filed with the Commission. It is, further,

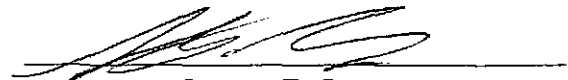
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

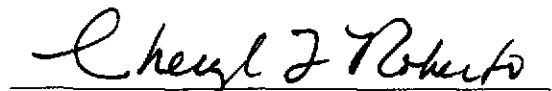
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


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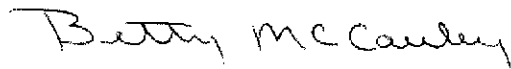

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Betty McCauley
Secretary